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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 IN RE: PHENYLPROPANOLAMINE  
7 (PPA) PRODUCTS LIABILITY  
8 LITIGATION,

MDL NO. 1407

ORDER VACATING ORDERS TO  
SHOW CAUSE

9 This document relates to:

10 See Appendix A

11  
12 This matter comes before the court on orders to show cause  
13 ("OSC") issued in cases listed in Appendix A to this order, and  
14 the related parties' responses thereto. Each OSC required the  
15 plaintiff to show cause why its case should not be dismissed for  
16 apparent failure to comply with Case Management Order ("CMO") 19.  
17 That order provides in relevant part:

18 Plaintiff(s) in each case transferred to this court  
19 shall complete a Plaintiff's Fact Sheet in all re-  
20 spects, including providing Defendants with all appli-  
21 cable accompanying authorizations . . . no later than  
22 45 days after the transmission to plaintiff(s) of the  
23 blank PFS. To "complete a PFS in all respects" means to  
24 answer every question on the PFS and leave no blanks,  
25 even if a plaintiff can only answer the question in  
26 good faith by indicating "not applicable" or "I don't  
know." . . . If a defendant received a PFS in the  
allotted time, but the PFS is not completed in all  
respects, counsel for defendant shall send a deficiency  
letter to that plaintiff's counsel . . . specifying  
those aspects of the PFS which are claimed to be incom-  
plete, allowing plaintiff an additional 15 days to  
serve a completed PFS. . . . Should a plaintiff fail to

1       cure the deficiencies identified and provide complete  
2       responses (including signatures on all applicable  
3       authorizations) within 15 days of the transmission of  
4       the deficiency letter, any defendant of record in the  
5       case is entitled to seek an Order to Show Cause why the  
6       case should not be dismissed.

7 CMO 19, 2-4. Defendants in the cases listed on Appendix A seek  
8 dismissal, claiming plaintiffs have failed to comply with CMO 19.  
9 In support of their position, defendants cite previous orders of  
10 this court dismissing plaintiffs for failure to submit a timely  
11 PFS.

12       The factual and procedural histories among the cases cur-  
13 rently before the court vary. Nevertheless, unlike those cases  
14 involved in orders to which defendants have cited, the instant  
15 cases display an apparent effort on behalf of plaintiffs' counsel  
16 to comply with the demands of PFS-related CMOs. The initial fact  
17 sheets in the cases listed in Appendix A were submitted in a  
18 timely manner, in most cases with the vast majority of the  
19 questions completed. Moreover, many of the putative deficiencies  
20 are actually answers given in various incarnations of "I don't  
21 know" and "not applicable," responses permitted by CMO 19. In  
22 other cases, the initial fact sheets were supplemented and  
23 complete in all respects only days late.

24       In these respects, the instant cases are distinct from those  
25 the court has already dismissed for failure to comply with  
26 PFS-related CMOs. In many of those cases, plaintiffs failed for  
months to serve even an initial PFS. See, e.g., October 24, 2003  
Order Granting Motion to Dismiss with Prejudice for Failure to

1 Comply with Court-Ordered Discovery at 2-3. ("Many of the cases  
2 subject to this order have been on file for over a year. During  
3 that time, plaintiffs have not moved their cases forward. Such  
4 lack of diligence does not serve the public interest in expedi-  
5 tious resolution of litigation."). Indeed, plaintiffs in many of  
6 the earlier cases did not serve an initial PFS until defendants  
7 moved for dismissal. See October 22, 2003 Order of Dismissal  
8 with Prejudice for Failure to Comply with CMO 6.

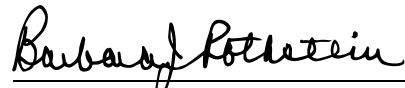
9 In further contrast, it cannot be said that plaintiffs in  
10 the instant cases have failed "to provide any information regard-  
11 ing the critical elements of their claims," or that defendants  
12 are "unable to mount [their] defenses because [they have] no  
13 information about the plaintiff or the plaintiff's injuries  
14 outside the allegations of the complaint." Compare October 22,  
15 2003 Order at 4 (emphasis added). Plaintiffs in these cases have  
16 demonstrated good faith - if deficient - efforts to complete  
17 their fact sheets in all respects and not, as in earlier cases,  
18 total lack of diligence.

19 Given the above analysis, the court finds plaintiffs have  
20 shown good cause as to why the cases listed in Appendix A should  
21 not be dismissed, and hereby VACATES the orders to show cause.

22 The court acknowledges the fine line between failure to  
23 comply with CMO 19 wherein dismissal is an appropriate remedy,  
24 and permissible deficiencies in discovery efforts for which  
25 dismissal would be too harsh a response. Plaintiffs are there-  
26 fore admonished not to take this order as license to disregard

1 the requirements of CMOs 6, 10 or 19. The court also reminds  
2 plaintiffs that any discovery they fail to submit to defendants  
3 in a timely manner will not be available to them for use at  
4 trial. Moreover, nothing in this order should be read to dis-  
5 courage defendants from filing motions to compel discovery that  
6 remains material to their defense. Finally, the court acknowl-  
7 edges the potential delay in discovery resulting from the CMO 19  
8 procedure, and hereby orders that the discovery period shall  
9 begin to run in those cases listed on Appendix A as of the date  
10 of this order.

11 DATED at Seattle, Washington this 28th day of February,  
12 2005.

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14 BARBARA JACOBS ROTHSTEIN  
15 UNITED STATES DISTRICT JUDGE  
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APPENDIX A

CASE NAME	CAUSE NUMBER
Bean v. Novartis Corporation	C04-60 <sup>1</sup>
Brealon v. Bayer Corporation	C03-2860
Coleman v. Bayer Corporation	C03-2862
Craven v. Bayer Corporation <sup>2</sup>	C03-3811
Holt v. Bayer Corporation	C04-1361
Hunt v. American Home Products Corporation	C03-3793
Keyes v. Bayer Corporation	C04-1153
Leija v. Bayer Corporation	C03-3467
Martinez-Miranda v. Bristol-Myers Squibb Company	C04-377
Nottingham v. Bayer Corporation	C04-54
Powell v. Bayer Corporation	C03-3813
Thomas v. Bayer Corporation	C03-3801
Wise v. Shering-Plough Corporation	C03-3790

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<sup>1</sup>The court also grants plaintiff's motion for leave to file a response in this case.

<sup>2</sup>The court also denies plaintiff's motion for sanctions in this case.